

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

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| AMERICAN CIVIL LIBERTIES UNION, |) |) | |
| ET AL. |) |) | |
| |) |) | |
| Plaintiffs, |) |) | |
| |) |) | |
| v. |) |) | Civil Action No. 16-10613-JCB |
| |) |) | |
| |) |) | |
| UNITED STATES DEPARTMENT OF |) |) | |
| EDUCATION, |) |) | |
| |) |) | |
| Defendant. |) |) | |
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**MEMORANDUM OF LAW AND STATEMENT OF
UNDISPUTED FACTS IN SUPPORT OF DEFENDANT’S
MOTION FOR SUMMARY JUDGMENT
(LEAVE TO FILE GRANTED: APRIL 19, 2017)**

Plaintiffs American Civil Liberties Union, *et al.* (“ACLU”) commenced this action under the Freedom of Information Act, 5 U.S.C. § 552 (“FOIA”), seeking the release of documents and information by Defendant United States Department of Education (“DOE”), including its office for Federal Student Aid (“FSA”), detailing its student loan debt collection practices. In general, the ACLU requested documents that it believed could determine whether the DOE’s collection policies result in an adverse impact to particular racial groups.

In support of its Motion for Summary Judgment, the DOE files herewith the Declaration of Ann Marie Pedersen, which recounts the chronology of the administrative processing of the ACLU’s FOIA request, identifies the mission of the FSA and the records at issue in the request, and explains the bases for withholding or redacting any information. For the reasons set forth herein, the DOE respectfully submits that no genuine issue of material fact exists and that its Motion for Summary Judgment should be granted pursuant to Rule 56 of the Federal Rules of

Civil Procedure because DOE has produced all documents required under FOIA, and all documents that were withheld from production by DOE are exempted under that statute.

LOCAL RULE 56.1 STATEMENT OF UNDISPUTED FACTS

The DOE provides the undisputed facts below which discuss the DOE's search for documents and exemptions maintained in this suit through the Declaration of Ann Marie Pedersen, Director of the Correspondence Services Unit, within the Communications Office of the DOE's office for FSA ("Pedersen Decl."), attached hereto as *Exhibit 1*.

A. Plaintiff's FOIA Request

1. On May 11, 2015, the DOE received the FOIA request ("Request") at issue in this litigation from the ACLU. *See* Pedersen Decl., ¶ 4.
2. The Request sought the following:
 - (1) Any corrective action plan created by the DOE in response to the Final Audit Report of the DOE Office of Inspector General issued in July 2014, *see* U.S. Department of Education Office of Inspector General, ED-OIG/A06M0012, Handling of Borrower Complaints Against Private Collection Agencies, Final Audit Report 1-2 (2014) (the "OIG Report"). *Id.*
 - (2) Any report, correspondence, or other information submitted to Congress, including but not limited to any individual member of Congress or any Congressional committee or sub-committee, in response to the OIG Report or that references the OIG Report. *Id.*
 - (3) All correspondence with any private collection agency ("PCA") regarding any interpretation, meaning, or proposed revisions of the DOE's regulations, guidance, policies, or manuals. *Id.*
 - (4) All policies, procedures, guidelines, or similar documents currently in effect concerning the calculation, assessment, or determination of collection fees charged to borrowers by the DOE or any entity acting on behalf of the DOE, including but not limited to factors used to determine whether collection fees will be added to loan balances and formulas used to calculate fee amounts. *Id.*
 - (5) All policies, procedures, guidelines, or similar documents currently in effect concerning the circumstances under which a PCA may initiate, or cause the DOE to

- initiate, administrative wage garnishment, pursuant to 20 U.S.C. § 1095a or any other authority. *Id.*
- (6) All policies, procedures, guidelines, or similar documents currently in effect concerning the circumstances under which a PCA may initiate, or cause the DOE to initiate, an administrative offset, pursuant to 34 C.F.R. §§ 30.21-30.31, 682.410 or any other authority. *Id.*
 - (7) All policies, procedures, guidelines, or similar documents currently in effect concerning the circumstances under which a PCA may initiate, or cause the DOE to initiate, a tax refund offset, pursuant to 34 C.F.R. § 30.33 or any other authority. *Id.*
 - (8) All documents indicating the number of borrowers subject to administrative wage garnishment, administrative offset, or tax refund offset between January 1, 2012 and the date of the request, including, but not be limited to, all documents indicating the number of administrative wage garnishments, administrative offsets, or tax refund offsets undertaken on the DOE's behalf by each PCA engaged by the DOE. *Id.*
 - (9) All documents indicating the dollar amounts collected through administrative wage garnishment, administrative offset, or tax refund offset between January 1, 2012 and the date of the request including, but not be limited to, all documents indicating the dollar amounts collected through administrative wage garnishments, administrative offsets, or tax refund offsets undertaken on the DOE's behalf by each PCA engaged by the DOE. *Id.*
 - (10) All documents reflecting any analysis, investigation, or review of the collection methods used by any PCA, individually or in the aggregate, including but not limited to, decisions by PCAs to pursue any particular resolution with a borrower (*e.g.*, rehabilitation, consolidation, cancellation, administrative wage garnishment, administrative offsets, or tax refund offsets) and the frequency with which those collection methods are used. *Id.*
 - (11) All policies, procedures, guidelines, or similar documents reflecting how the DOE determines whether its collection policies result in an adverse impact to particular racial groups. *Id.*
 - (12) All data collected or maintained by the DOE reflecting the absolute number or percentage, by race, of borrowers whose student loans become delinquent or are in default. *Id.*
 - (13) All data collected or maintained by the DOE reflecting the absolute number or percentage, by race, of borrowers with delinquent or defaulted loans who are thereafter subject to the following collection methods:
 - a. Rehabilitation;
 - b. Consolidation;
 - c. Cancellation;

- d. Administrative Wage Garnishment;
 - e. Administrative Offsets; or
 - f. Tax Refund Offsets. *Id.*
- 14) All documents generated between January 1, 2012 and the date of the request concerning the process through which the DOE selects entities to engage as PCAs, including, but is not limited to, all documents used in the procurement of Default Collection Services (solicitation number: ED-FSA-13-R-001 0) to select entities to advance to Phase II of the procurement process or for final award of the PCA contract. *Id.*
- 15) Documents sufficient to show the number of administrative wage garnishments initiated between January 1, 2012 and the date of the request, pursuant to 20 U.S.C. § 1095a and its implementing regulations or any other authority, whether initiated directly by the DOE, a PCA, or any other entity acting on the DOE's behalf. *Id.*
- 16) All documents reflecting administrative wage garnishment proceedings initiated between January 1, 2012 and the date of the request in which the borrower raised an objection to the wage garnishment, and all records of the resolution of the asserted objection. *Id.*
- 17) Documents sufficient to show the number of administrative offsets and tax offsets initiated between January 1, 2012 and the date of the request, pursuant to 31 C.P.R. §§ 30.20-30.35 or any other authority, whether initiated directly by the DOE, a PCA, or any other entity acting on the DOE's behalf. *Id.*
- 18) All documents reflecting administrative offset proceedings initiated between January 1, 2012 and the date of the request in which the borrower raised an objection to the offset, and records of the resolution of the asserted objection. *Id.*
- 19) Documents sufficient to show the fees, commissions, or other forms of remuneration received by each PCA between January 1, 2012 and the date of the request for each instance in which it resolved a purported default using the following methods:
- a. Rehabilitation;
 - b. Consolidation;
 - c. Cancellation;
 - d. Administrative Wage Garnishment;
 - e. Administrative Offsets; or
 - f. Tax Refund Offsets. *Id.*
- 20) All monthly "Contractor's Management and Fiscal Report[s]," as provided for in the Department's Default Collection Contract Statement of Work PCA Periodic Contract, containing borrower complaint information submitted by each PCA to the Department between January 1, 2012 and the date of the request. *Id.*, ¶4.

3. On June 2, 2015, FSA held a meeting of its internal components to coordinate searching for and identifying records responsive to the Request. *Id.*, ¶ 5. FSA met regularly over the next several months to prepare its response. *Id.*

4. On December 3, 2015, the DOE released a first transfer of records to the ACLU. *Id.*, ¶ 6. This response included 603 pages of records and/or information responsive to items 2, 8, 9 and 15-19 of the request, and included a request for clarification of several individual requests and asked whether the ACLU wished to prioritize particular items for production. *Id.*

5. On January 20, 2016, the DOE contacted the ACLU with additional requests for clarification for items 10 and 20 of the Request. *Id.*, ¶ 7.

6. On March 4, 2016, the DOE released a second transfer of records to the ACLU. *Id.*, ¶ 8. This production contained 1,723 pages of records responsive to items 1, 10 and 20 of the Request, a “no records” response on item 2, requests for clarification on items 6 and 7, and provided updates on the DOE’s response to items 3, 4, 5, 11, 12, 13, 14 and 20. *Id.*

7. On March 30, 2016, the ACLU filed this FOIA lawsuit claiming that the DOE improperly denied access to the records responsive to the Request. *Id.*, ¶ 9.

8. In the subsequent months, the DOE worked with the ACLU to provide documents responsive to the Request while also clarifying and narrowing its scope. *Id.*, ¶ 10. FSA continued the process of gathering and releasing responsive documents and engaged in frequent conversations with the ACLU to better identify the records sought. *Id.* For example, on July 6, 2016, August 23, 2016, and January 23, 2017, the DOE participated in conference calls with the ACLU to provide updates on the DOE’s processing of outstanding items of the Request and to answer questions about the data provided in previous responses. *Id.* The DOE also provided

explanatory information by letter¹ and email on November 23, 2016, December 22, 2016, January 5, 2017, January 18, 2017 and February 28, 2017. *Id.* The DOE continued to release responsive records to the ACLU. *Id.* Specifically, the DOE produced interim responses on July 20, 2016, August 3, 2016, October 28, 2016, November 23, 2016, February 3, 2017, and April 11, 2017, totaling 5871 pages of responsive records. *Id.*

9. Through regular and ongoing conversations, the DOE explained records provided to the ACLU and created records that explained the systems and records maintained by the DOE, so that the ACLU could clarify the scope of various items within Request. *Id.*, ¶ 11. As a result of these interactions, the ACLU eventually began identifying the actual records sought. *Id.*

10. Based on the Request and these conversations, the DOE released the following:

- 1) A five-page Corrective Action Plan developed to respond to recommendations made in an Office of Inspector General (OIG) audit issued on July, 2014, responding to borrower complaints against PCAs.
- 2) 145 pages of the DOE's standard contract with PCAs.
- 3) 75 page analysis of FSA's review of PCA collection methods.
- 4) 27 pages of Administrative Wage Garnishment ("AWG") technical procedures.
- 5) 390 pages of training manuals and technical guidance provided to PCA or FSA personnel.
- 6) 59 pages of correspondence containing guidance from FSA to the PCAs.
- 7) A 64-page sample of FSA's September 2015 Data Management and Fiscal Report.

¹ Under FOIA, an agency is not obligated to provide explanation of documents, nor create documents in response to a FOIA request. *See, e.g., N.L.R.B. v. Sears, Roebuck & Co.*, 421 U.S. 132, 161-62 (1975); *Hudgins v. IRS*, 620 F. Supp. 19, 21 (D.D.C. 1985) (FOIA does not require an agency to answer questions, or create documents or opinions to an individual's request for information); nonetheless, on numerous occasions, DOE did both with the aim to provide a full response in good faith.

- 8) 603 pages of wage garnishment and administrative offset borrower counts and fees paid to PCAs.
- 9) 1330 pages of PCA complaints.
- 10) 130 pages of communications related to the DOE's 2015 Dear Colleague letter regarding student loan collection fees.
- 11) 41 pages of an agreement between the DOE and the Department of Treasury regarding Treasury offset procedures.
- 12) 291 pages of the FSA PCA Procedures Manual.
- 13) One page of PCA guidance.
- 14) One page of a screen shot of the DOE's AWG system.
- 15) One page of the DOE's AWG system field descriptions.
- 16) 2,660 pages of formulas underlying the DOE's AWG Hardship Calculator.

The DOE redacted from some of the documents information exempt from disclosure under FOIA Exemptions 4, 5, 6, and 7(E). *Id.*

11. The DOE withheld in full 131 pages of "source selection materials" related to PCA contracts under FOIA Exemptions 3 and 5. *Id.*, ¶ 12.

12. On February 13, 2017, the ACLU informed the DOE by letter that it was challenging "each and every" invocation of FOIA Exemption 5 and 7, whether asserted to withhold a record in part or in full. *Id.*, ¶ 13. The ACLU initially challenged the DOE's assertion of FOIA Exemption 4, excluding instances where Exemption 4 was asserted solely to protect "database codes" and "[PCA] employee names" from release. *Id.*² However, since those

² As stated above, ACLU does not challenge DOE's Exemption 4 withholding as they protect databases, codes, and PSA employee names; thus, since that is the only bases for withholding by DOE, said Exemption is not discussed herein and DOE reserves its right to address Exemption 4 in this matter should the ACLU raise it in its papers.

were the only bases of the Exemption 4 assertion, the DOE will not address Exemption 4 in this brief. The ACLU also challenged the DOE's decision to withhold in full 131 pages of "source selection materials" related to PCA contracts under FOIA Exemptions 3 and 5. *Id.* Despite repeated requests, the ACLU was unwilling to further explain the bases for these challenges. *Id.* The DOE has therefore been unable to engage in further negotiations with the Request as to the scope of these redactions. *Id.*

13. The DOE worked with the ACLU in good faith and believes the responses represent a full document production consistent with the Request and in accordance with the statute. *Id.*, ¶ 14.

B. FSA Guidelines and Procedure

14. The FSA is responsible for a range of functions across the student aid lifecycle, which include: educating students and families about the process of obtaining financial aid; processing millions of student financial aid applications; disbursing billions of dollars in student financial aid; insuring billions of dollars in guaranteed student loans previously issued by financial institutions; enforcing financial aid rules and regulations; servicing millions of student loans and helping borrowers avoid default; securing repayment from borrowers who have defaulted on their loans; and partnering with schools, financial institutions, and guaranty agencies to prevent program waste, fraud and abuse. *Id.*, ¶ 17.

15. The FSA has the legal responsibility and authority under Title IV of the Higher Education Act of 1965 ("HEA") to effect the repayment of student loans in order to recoup the taxpayers' substantial investment in the higher education of student loan borrowers. *Id.*, ¶ 20.

16. Loans in repayment are handled by servicers contracted by the DOE and incentivized to work with borrowers to keep them in a regular payment pattern and to prevent

borrowers from going into default. *Id.*, ¶ 21. To this end, there are many Title IV benefits, flexibilities, and entitlements available to a borrower, such as deferments, forbearances, and a variety of repayment plans, including ones based on the borrower's income. *Id.* As reported in the FSA 2015 Annual Report, DOE servicers manage a \$1.2 trillion portfolio representing the loans of 42 million borrowers, affecting 6,101 post-secondary institutions. *Id.*, ¶ 22.

17. Borrowers are required to repay student loans even if the borrower does not complete their education, is unable to find a job or is unhappy with the education and paid for with the federal loan. *Id.*, ¶ 23.

18. A borrower defaults on a student loan when they are 360 days delinquent on the loan. *Id.*, ¶ 24. Once an account goes into default, it enters the default system for collections, the borrower loses all Title IV benefits and, pursuant to the terms of the promissory note signed by every borrower, the total amount of the loan, plus interest, becomes immediately due and payable. *Id.* All resolutions of defaulted student loan accounts, other than immediate payment in full, are compromise settlements agreed to at the discretion of FSA's Default Division. *Id.*

19. FSA's Default Division is responsible for FSA's student loan default portfolio which totals more than \$52 billion in loans made to more than four million borrowers. *Id.*, ¶ 25. The FSA Default Division manages the DOE's program to collect on defaulted student loans, and is responsible for review and oversight of FSA debt collection policies and procedures to ensure their compliance with applicable laws and regulations. *Id.*

20. To carry out its statutory and regulatory law enforcement responsibilities to service student loans and to collect on defaulted student loans, the DOE contracts with loan servicers and PCAs. *Id.*, ¶ 26. Congress directed federal agencies to leverage the commercial marketplace to the maximum extent practicable in conducting government business. *Id.*

21. As experts in their respective markets, these contractors, in concert with DOE officials are expected to follow DOE regulations and contract requirements as the necessary guidance to fulfill their contracted responsibilities and to exercise professional judgment in its enactment. *Id.*, ¶ 27.

22. Specifically, in regard to PCAs, the DOE has developed procedures intended both to allow necessary FSA oversight of these contractors and to permit each PCA the flexibility needed to customize its collection work to achieve maximum recoupment of the defaulted loans owed to the taxpayers in accordance with all applicable laws. *Id.*, ¶ 28. These procedures and other PCA requirements are detailed in the PCA Procedures Manual. *Id.*

23. The Internal Corrective Action Report is an internal Departmental document detailing recommended actions to be taken by the Department in response to the Final Audit Report of the Department's Office of Inspector General issued in July 2014, "Handling of Borrower Complaints Against Private Collection Agencies, Final Audit Report 1-2." *Id.*, ¶ 31.

24. The PCA Contract Documents comprise the standard and current PCA contract (ED-FSA-09-O-0025). *Id.*, ¶ 32. This contract details the terms and obligations of the PCA's in their responsibilities on behalf of the Department, including pay rate information. *Id.* The Source Selection Materials identified in response to this request include information used in the Department's 2015 determination of contract award extensions for PCAs. *Id.*

25. The June 27, 2016 Addendum to the PCA Agreement details guidance on Treasury Offset procedures. *Id.*, ¶ 33. The Treasury Offset Program is a centralized offset program, administered by the Bureau of the Fiscal Service's Debt Management Services (DMS), to collect delinquent debts owed to federal agencies and states (including past-due child support),

in accordance with 26 U.S.C. § 6402(d) (collection of debts owed to federal agencies), 31 U.S.C. § 3720A (reduction of tax refund by amount of the debts), and other applicable laws. *Id.*

26. As stated above, to carry out its statutory and regulatory law enforcement responsibilities to service student loans and to collect on defaulted student loans, the DOE contracts with loan servicers and PCAs. *Id.*, ¶ 34. The Federal Managers Financial Integrity Act, 31 U.S.C. § 3512, requires agencies to establish a system of internal controls to ensure the effectiveness and efficiency of operations, compliance with regulations, and applicable laws and the reliability of financial reporting. *Id.*

27. The DOE extends that requirement to its contractors through the establishment of internal controls designed to ensure its contractors are abiding by applicable laws and regulations in the enforcement of its policies and procedures. *Id.*, ¶ 35. Loan collection policies include but are not limited to privacy protections, and activities further detailed in the Fair Debt Collection Practices Act, 15 U.S.C. § 1692. *Id.*

28. The documents provided in response to this request include internal communications between DOE employees and contractor staff regarding individual loan collection issues, as well as internal deliberative communications in advance of loan collection policy development. *Id.*, ¶ 36. The DOE also identified as responsive specific information related to how the DOE collects loans through the PCA and FSA Participants Manuals, the Technical Procedures on AWG Processing, and the PCA Procedures Manual. *Id.*, ¶ 37. Over the years, FSA's Default Division has developed these manuals and procedures to instruct the PCAs on their interactions with FSA's Default Division and borrowers. *Id.*, ¶ 38. These manuals and procedures set out the DOE's requirements for the PCAs' interactions with FSA and borrowers to ensure consistency in their collection practices and FSA's operational requirements. *Id.*, ¶ 39.

29. The manuals and procedures are not publicly available, and FSA has shared it only with the PCAs who have a prime contract with the DOE and relevant Department employees. *Id.*, ¶ 40. FSA provides for the confidentiality of this document in both the terms of the PCA contract and a confidentiality notice. *Id.* Section 6.2.7 of the contract states:” The contractor shall ensure that sensitive information shall not be released outside control of the organization.” *Id.* Moreover, the entire Manual is covered by the following notice on each page “Distribution authorized to the Department of Education and its Private Collection Agency contractors only.” *Id.*

C. FOIA Exemptions 3, 5, 7(C), and 7(E)

30. All information withheld pursuant to the Request is exempt from disclosure in accordance with specific FOIA exemptions. *See* 5 U.S.C. § 552(b); Pedersen Decl., ¶¶ 43-60.

31. FOIA Exemption 3 protects from disclosure information prohibited from disclosure by another federal statute where that statute either “(A) requires that the matter be withheld from the public in such a manner as to leave no discretion on the issue, or (B) establishes particular criteria for withholding or refers to particular types of matters to be withheld.” 5 U.S.C. § 552(b)(3); Pedersen Decl., ¶ 43.

32. Under Exemption 3, the DOE withheld in full “source selection materials” for PCA contractual bids, prohibited from disclosure pursuant to the Program Integrity Act, which provides that federal agencies “shall not, other than as provided by law, knowingly disclose contractor bid or proposal information or source selection information before the award of a Federal agency procurement contract to which the information relates.” 41 U.S.C. § 2102(a)(2). Pedersen Decl., ¶¶ 44-45. These “source selection materials” were generated prior to

Departmental determinations on awarding contract extension, and, thus, prohibited from disclosure. *Id.*, ¶ 45.

33. FOIA Exemption 5 protects “inter-agency or intra-agency memorandums or letters which would not be available by law to a party other than an agency in litigation with the agency.” 5 U.S.C. § 552(b)(5); Pedersen Decl., ¶ 46. Exemption 5 encompasses the deliberative process, attorney-client, and attorney work product privileges. *See* Pedersen Decl., ¶ 46. The DOE withheld certain records, in whole or in part, pursuant to the privileges housed within Exemption 5.³ *Id.*

34. The DOE withheld, in part, under Exemption 5’s deliberative process privilege an internal document detailing recommended actions to be taken by the DOE in light of an Internal Report issued by the Office of Inspector General. *Id.*, ¶ 47. The redacted portions are pre-decisional and contain proposals on how the DOE might best respond to the deliberative report. *Id.* The DOE also withheld under the deliberative process privilege portions of internal communications analyzing the DOE’s collection methods as applied by PCAs and developing Frequently Asked Questions related to collection fees. *Id.*, ¶ 48. These deliberations are part of the DOE’s process of creating future collection policies. *Id.* The DOE also redacted from e-mails among DOE employees and between the DOE and its loan servicers discussions concerning the appropriate response to borrowers’ requests for assistance and the processing of particular borrowers’ claims. *Id.*, ¶ 49. The discussions were deliberative in nature and conducted prior to a final decision with respect to a particular borrower issue. *Id.* The disclosure of this information would have a chilling effect on the DOE’s ability to deliberate candidly and

³ The information withheld pursuant to Exemption 5 is identified in the *Vaughn* Index attached as Exhibit B to Pedersen Decl..

openly while formulating policy decisions and other determinations and, in some instances, might confuse and mislead the public because certain of the redacted information includes reasoning that was not ultimately adopted by the DOE. *Id.*

35. Pursuant to the attorney work product privilege under Exemption 5, the DOE withheld sections of the May 2016 PCA Procedures Manual that provide guidance for attorneys in connection with the preparation of a certificate of indebtedness and a claims collection litigation report in advance of litigation. *Id.*, ¶ 50. This information contains legal analysis and strategies to support the DOE attorneys' handling of AWG hearings and prosecution of collections actions. *Id.*

36. The DOE also invoked Exemptions 7(C) and (E), dealing with information compiled for law enforcement purposes. *See id.*, ¶¶ 51-60. The FSA is responsible for effecting the repayment of student loans distributed under the student federal assistance programs authorized under Title IV of the HEA. *Id.*, ¶ 57. To carry out that mandate, the Department contracts with PCAs and loan servicers and works with federal prosecutors and other attorneys to enforce collection of debts resulting from non-payment of student loans and grant overpayments in compliance with other statutes generally governing debt collection activities. *Id.* Further, the PCA Procedures Manual is used in the DOE's effort to collect on a defaulted federal debt through collections actions, litigation, or administrative wage garnishment. *Id.*, ¶ 59. As such, it was created and compiled for the law enforcement purpose of collecting on the defaulted debt. *Id.*

37. Exemption 7(C) provides protection for personal information in law enforcement records, the disclosure of which "could reasonably be expected to constitute an unwarranted invasion of personal privacy." 5 U.S.C. § 52(b)(7)(C). *See Pedersen Decl.*, ¶ 51. The DOE

applied Exemptions 6 and 7(C) to the names of the employees of the PCAs contained in the PCA Procedures Manual.⁴ *See* Pedersen Decl., ¶ 52. The PCA Procedures Manual is a document compiled for law enforcement purposes and contains guidelines with respect to the enforcement of the collection debt from borrowers who have defaulted on their student loans. *Id.*, ¶ 54.

38. Exemption 7(E) protects “records or information compiled for law enforcement purposes” to the extent the production of the records or information would disclose “guidelines for law enforcement investigations or prosecutions” the disclosure of which “could reasonably be expected to risk circumvention of the law.” 5 U.S.C. § 552(b)(7)(E). *See* Pedersen Decl., ¶ 56. The DOE has withheld under Exemption 7(E) guidelines for the enforcement of debt collection from borrowers who have not timely repaid their student loans and are in default, the disclosure of which could allow borrowers and companies marketing their services to borrowers to determine ways to continue to delay or avoid repayment of their loans.⁵ *Id.*

39. The DOE has withheld under Exemption 7(E) the guidelines the DOE provides to its contractors and attorneys in connection with the enforcement of borrowers’ obligations to pay their student loans. *Id.*, ¶ 58. Specifically, the DOE withheld from the PCA Contract

⁴ For specific withholdings pursuant to Exemption 7(C), *see Vaughn Index*, Exhibit B to Pedersen Decl. As mentioned above, Exemptions 6 and 7(C) both provide that government documents may be withheld where their disclosure would cause an “unwarranted invasion of personal privacy.” *See* 5 U.S.C. § 552(b)(6), (b)(7)(C); *U.S. Dep’t of State v. Ray*, 502 U.S. 164, 174-75 (1991). Specifically, Exemption 6 states that FOIA does not apply to “personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.” § 552(b)(6). Because the ACLU does not challenge the DOE’s use of Exemption 6 to protect disclosure of these names, the DOE will not address either Exemption 6 or 7(C) in this brief. However, should the ACLU challenge DOE’s use of either Exemption, DOE reserves its rights to discuss the applicability of these Exemptions in its Reply.

⁵ For specific withholdings pursuant to Exemption 7(E), *see Vaughn Index* attached as Exhibit B to Pederson Decl.

Documents, Analysis of PCA Collection Methods, AWG Technical Procedures and PCA Procedures Manual certain details of the processes used by PCAs to collect defaulted student loans, including enforcement strategies, payment procedures, and compromise guidelines. *Id.* Finally, the DOE has withheld (c) portions of an Addendum to an Agreement between the DOE and the Department of the Treasury regarding Treasury Off-Set Procedures, which sets forth guidelines by which the agencies enforce student loan repayment through non-voluntary collections. *Id.* All of this information constitutes the sort of law enforcement guidelines contemplated by Exemption 7(E). *Id.*

STANDARD OF REVIEW

A. Summary Judgment Standard

Where no genuine dispute exists as to any material fact, summary judgment is required. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242 (1986); *Borges v. Serrano-Isern*, 605 F.3d 1, 4 (1st Cir. 2010) (citing Fed. R. Civ. P. 56(c)(2)). A genuine issue of material fact is one that would change the outcome of the litigation. *Anderson*, 477 U.S. at 247. “The burden on the moving party may be discharged by ‘showing’ -- that is, pointing out to the [Court] -- that there is an absence of evidence to support the non-moving party’s case.” *Sweats Fashions, Inc. v. Pannill Knitting Co., Inc.*, 833 F.2d 1560, 1563 (Fed. Cir. 1987). Once the moving party has met its burden, the non-movant may not rest on mere allegations, but must instead proffer specific facts showing that a genuine issue exists for trial. *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 586 (1986).

B. FOIA Cases are Most Appropriately Decided on Summary Judgment

FOIA actions are “generally and most appropriately” adjudicated through summary judgment. *National Day Laborer Organizing Network v. U.S. Immigration and Customs*

Enforcement, 811 F. Supp. 2d 713, 732-733 (S.D.N.Y. 2011), *citing Bloomberg L.P. v. Board of Governors of the Fed. Reserve Sys.*, 649 F. Supp. 2d 262, 271 (S.D.N.Y. 2009); *Miscavige v. Internal Revenue Serv.*, 2 F.3d 366, 369 (11th Cir. 1993).

“In a FOIA case, summary judgment may be granted to the government if ‘the agency proves that it has fully discharged its obligations under the FOIA, after the underlying facts and the inferences to be drawn from them are construed in the light most favorable to the FOIA requester.’” *ACLU Foundation of Massachusetts v. FBI*, No. 14-11759, 2016 U.S. Dist. LEXIS 110022, at *9 (D. Mass. Aug. 17, 2016) (quoting *Fischer v. U.S. Dep’t of Justice*, 596 F. Supp. 2d 34, 42 (D.D.C.2009)). An agency is entitled to summary judgment once it demonstrates that no material facts are in dispute and, if applicable, that each document that falls within the class requested either has been produced, is unidentifiable, or is exempt from disclosure. *Students Against Genocide v. Dept. of State*, 257 F.3d 828, 833 (D.C. Cir. 2001); *Weisberg v. U.S. Dep’t of Justice*, 627 F.2d 365, 368 (D.C. Cir. 1980). An agency satisfies the summary judgment requirements in a FOIA case by providing the Court and plaintiff with affidavits or declarations and other evidence which show that the documents in question were produced or are exempt from disclosure. *Hayden v. NSA*, 608 F.2d 1381, 1384, 1386 (D.C. Cir. 1979), *cert. denied*, 446 U.S. 937 (1980); *Church of Scientology v. U.S. Dep’t of Army*, 611 F.2d 738, 742 (9th Cir. 1980); *Trans Union LLC v. FTC*, 141 F. Supp. 2d 62, 67 (D.D.C. 2001) (summary judgment in FOIA cases may be awarded solely on the basis of agency affidavits “when the affidavits describe ‘the documents and the justifications for non-disclosure with reasonably specific detail, demonstrate that the information withheld logically falls within the claimed exemption, and are not controverted by either contrary evidence in the record nor by evidence of agency bad faith.’”) (quoting *Military Audit Project v. Casey*, 656 F.2d 724, 738 (D.C. Cir. 1981)); *see also Public*

Citizen Inc. v. Dept. of State, 100 F. Supp. 2d 10, 16 (D.D.C. 2000), *aff'd in part, rev'd in part*, 276 F.3d 634 (D.C. Cir. 2002).

Generally, a court should accord “substantial weight” to agency affidavits in these matters. *See Bell v. United States*, 563 F.2d 484, 487 (1st Cir. 1977). Further, the test of sufficiency of the submitted affidavits should be whether the affidavit demonstrates by “sufficient description (that) the contested document logically falls into the category of the exemption indicated,” and the court “need not go further to test the expertise of the agency, or to question its veracity when nothing appears to raise the issue of good faith.” *Id.* at 487. *See also Hrones v. C.I.A.*, 685 F.2d 13, 18 (1st Cir. 1982).

The requester may challenge such a showing by “set[ting] forth specific facts showing that there is a genuine issue for trial,” Fed. R. Civ. P. 56(e), that would permit a reasonable jury to find in his favor. *Laningham v. U.S. Navy*, 813 F.2d 1236, 1241 (D.C. Cir. 1987). Agency declarations “are afforded a presumption of good faith”, and an adequate affidavit “can be rebutted only ‘with evidence that the agency’s search was not made in good faith.’” *Defenders of Wildlife v. U.S. Dep’t. of Interior*, 314 F. Supp. 2d 1, 8 (D.D.C. 2004).

ARGUMENT

A. DOE is Entitled to Judgment as a Matter of Law

1. DOE Properly Withheld Information Pursuant to 5 U.S.C § 552 (b)

a. FOIA Exemption (3)

DOE properly withheld 131 pages of documents regarding the award of contracts to PCAs under FOIA Exemption 3. Exemption 3 protects from disclosure matters that are “specifically exempted from disclosure by statute...” provided that such statute (A) “requires that the matters be withheld from the public in such a manner as to leave no discretion on the

issue”; or (B) “establishes particular criteria for withholding or refers to particular types of matters to be withheld.” 5 U.S.C. §552(b)(3).

The applicability of Exemption 3 pertains to the statute selected, as opposed to the particular documents or records requested by a plaintiff. *See Amnesty International USA v. CIA*, 728 F.Supp.2d 479, 501 (S.D.N.Y. 2010) (“Exemption 3 differs from other FOIA exemptions in that its applicability depends less on the detailed factual contents of specific documents; the sole issue for decision is the existence of a relevant statute and the inclusion of withheld material within that statute’s coverage.” (quoting *Goland v. CIA*, 607 F.2d 339, 350 (D.C. Cir. 1978))). *See also Larson v. Dep’t of State*, 565 F.3d 857, 865 (D.C. Cir. 2009) (an agency “need only show that the statute claimed is one of exemption as contemplated by Exemption 3 and that the withheld material falls within the statute.”); *Morley v. CIA*, 508 F.3d 1108, 1126 (D.C. Cir. 2007).

Here, the Procurement Integrity Act, 41 U.S.C. § 2102(a)(1), provides that federal agencies “shall not knowingly disclose contractor bid or proposal information or source selection information before the award of a Federal agency procurement contract to which the information relates.” 41 U.S.C. § 2102(a)(1).⁶ This statute falls within the protections of Exemption 3. *See Raheer v. Federal Bureau of Prisons*, No. CV-09-526-ST, 2011 WL 2014875, at *4 (D. Ore. May 24, 2011) (no dispute that the Procurement Integrity Act is a statute that leaves no discretion as to the matters to be withheld) (formerly cited as 41 U.S.C. § 423); *Legal and Safety Employer Research, Inc. v. U.S. Dep’t of the Army*, 2001 WL 34098652, at *4 (E.D.Cal. May 4, 2001)

⁶ This statutory scheme defines a “Federal agency procurement contract” as “the acquisition (by using competitive procedures and awarding a contract) of goods or services (including construction) from non-Federal sources by a Federal agency using appropriated funds.” 41 U.S.C. § 2101(4).

(Procurement Integrity Act is a nondisclosure statute under subsection B of 5 U.S.C. § 552(b)(3)) (citing 41 U.S.C. § 423). Moreover, when agencies decide that information triggers Exemption 3, the government's decision to withhold is given more deference than with other exemptions. *Church of Scientology Int'l v. U.S. Dep't of Justice*, 30 F.3d 224, 235 (1st Cir. 1994). In this vein, "once a court determines that the statute in question is an Exemption 3 statute, and that the information requested at least arguably falls within the statute, FOIA *de novo* review normally ends." *Id.*, citing *Maynard v. CIA*, 986 F.2d 547, 554 (1st Cir. 1993).

On this legal backdrop, the DOE's engagement with PCAs (non-Federal entities used for loan collection), meets the definition of a Federal agency procurement contract contemplated in the statute. 41 U.S.C. § 2101(4). *See also* Pedersen Decl., ¶¶ 26-28, 34-41. By contracting with PCAs, the DOE is utilizing non-Federal services to assist with debt collection. *See* Pedersen Decl., ¶¶ 26-28, 34-41. The records at issue in the Request seek "source selection materials" for PCA bids with the DOE, *id.*, ¶ 44, which is included within the statute's coverage and exempt from disclosure in accordance with Exemption 3. *See* 41 U.S.C. § 2102(a)(1); *Amnesty International*, 728 F. Supp. 2d at 501. *See also* *Larson*, 565 F.3d at 865; *Bagwell v. U.S. Dep't of Education*, 183 F. Supp. 3d 109, 126-27 (D.D.C. 2016) (determining that DOE satisfied Exemption 3 standards by providing a detailed declaration explaining the material sought and the applicable statute).

b. FOIA Exemption (5)

Pursuant to Exemption 5, DOE properly withheld documents protected by the deliberative process privilege and the attorney client privilege. Exemption 5 protects "inter-agency or intra-agency memorandums or letters which would not be available by law to a party other than an agency in litigation with the agency." *State of Maine v. U.S. Dep't of Interior*, 298

F.3d 60 (1st Cir. 2002). 5 U.S.C. § 552(b)(5). The scope of the exemption is intended to incorporate and mimic the rules of civil discovery, including doctrines such as “attorney work product,” “attorney client privilege,” and the “deliberative process privilege.” *Dep’t of Interior v. Klamath Water Users Protective Assn.*, 532 U.S. 1, 8 (2001); *N.L.R.B. v. Sears, Roebuck & Co.*, 421 U.S. 132, 149-150 (1975); *see also State of Maine*, 298 F.3d at 66.

i. Internal Communications Deliberating Decision by DOE Were Properly Withheld Under the Deliberative Process Privilege

Documents covered by the deliberative process privilege and exempt under Exemption 5 include those that “reflec[t] advisory opinions, recommendations and deliberations comprising part of a process by which governmental decisions and policies are formulated.” *See Sears, Roebuck, & Co.*, 421 U.S. at 150 (internal quotations omitted), *quoting Carl Zeiss Stiftung v. V.E.B. Carl Zeiss, Jena*, 40 F.R.D. 318, 324 (D.C. 1966). The deliberative process privilege exists “to prevent injury to the quality of agency decisions. *Sears, Roebuck & Co.*, 421 U.S. at 151. This also helps to avoid confusion of the public due to “...dissemination of documents suggesting reasons and rationales for a course of action which were not...the ultimate reasons for that action.” *American Federation of Government Employees, AFL-CIO, Local 1164 v. U.S. Dept. Of Health & Human Services*, 64 F. Supp. 2d 104, 107 (D. Mass. 1999), *quoting Providence Journal Co. v. U.S. Dept. of Army*, 981 F.2d 552, 557 (1st Cir. 1992).

To properly invoke Exemption 5, an agency must first show that a requested document was “...prepared prior to a final decision in order to assist an agency decision maker in arriving at his decision. *See Town of Norfolk v. U.S. Army Corps of Engineers*, 968 F.2d 1438, 1458 (1st Cir. 1992) (internal quotations omitted), *quoting Renegotiation Bd. v. Grumman Aircraft Eng’g Corp.*, 421 U.S. 168, 184 (1975). It must additionally be shown that the document represents “...a direct part of the deliberative process in that it makes recommendations or expresses

opinions on legal or policy matters.” *Id.* By exempting disclosure, government agencies are able to engage in candid deliberations in advance of reaching a final decision on an issue. *See Petroleum Info Corp. v. U.S. Dep’t of Interior*, 92 F.2d 1429, 1434 (D.C. Cir. 1992) (deliberative process privilege protects “give and take” consultative process in agency decision-making).

In this matter, records sought by the ACLU involve a number of internal DOE documents concerning deliberations by the DOE for decisions on future policy matters. *See Pedersen Decl.*, ¶¶ 47-49. For example, the DOE exercised Exemption 5 to withhold, in part, an internal document detailing recommended action taken by the DOE in light of an Internal Report issued by the Office of Inspector General because it contains proposals on how the DOE might best respond. *See Pederson Decl.*, ¶ 47. Likewise, the DOE withheld portions of internal communications analyzing collection methods of PCAs for future collection policies. *Id.*, ¶ 48. Similarly, the DOE redacted from emails among DOE employees, and between DOE and its loan servicers, deliberations concerning the appropriate responses to borrowers’ requests for assistance, the processing of certain borrowers’ claims, how DOE might handle borrower defense claims, and the possible adoption of a policy on how to handle claims. *Id.*, ¶ 49. Release of the information would have a chilling effect on the agencies ability to have open and frank discussions while formulating policy in this regard, and might confuse the public because certain redacted information includes reasoning that was not ultimately adopted by the DOE. *Id.* By exempting disclosure, government agencies are able to engage in candid deliberations in advance of reaching a final decision on an issue. *See Petroleum Info Corp. v. U.S. Dep’t of Interior*, 92 F.2d 1429, 1434 (D.C. Cir. 1992)(deliberative process privilege protects the “give and take” consultive process in agency decision-making).

At bottom, the withheld or redacted documents detailed in the *Vaughn* Index are part of the deliberative process undertaken by the DOE before reaching a final policy decision and protected under Exemption 5. *See, e.g., Stalcup v. CIA*, 768 F.3d 65, 70 (1st Cir. 2014) (key issue is whether the documents were “prepared to facilitate and inform a final decision or deliberate function essential to the agency.”), *quoting Providence Journal Co.*, 981 F.2d at 560.

ii. Attorney Work Product

Exemption 5 also encompasses the work product privilege. *Sears, Roebuck & Co.*, 421 U.S. at 154-55 (1975). That doctrine protects documents “prepared in anticipation of litigation,” as well as “mental impressions, conclusions, opinions, or legal theories of a party’s attorney or other representative concerning the litigation.” Fed. R. Civ. P. 26(b)(3); *accord A. Michael’s Piano, Inc. v. FTC*, 18 F.3d 138, 146 (2d Cir. 1994). Without such protection, an entity would have to choose between “scrimp[ing] on candor and completeness” or disclosing its “assessment of its strengths and weakness . . . to litigation adversaries.” *U.S. v. Adlman*, 134 F.3d 1194, 1200 (2d Cir. 1998).

The privilege protects not only “deliberative materials but it also protects factual materials prepared in anticipation of litigation. Any part of [a document] prepared in anticipation of litigation, not just the portions concerning opinions, legal theories, and the like, is protected by the work product doctrine and falls under exemption 5.” *Tax Analysts v. IRS*, 117 F.3d 617, 620 (D.C. Cir. 1997) (citations omitted), *quoted in ACLU v. U.S. Dep’t of Justice*, 90 F. Supp. 3d 201, 213 (S.D.N.Y. 2015). Additionally, invocation of the privilege does not depend on the existence of a specific case or claim; “memos [that] advise the agency of the types of legal challenges likely to be mounted against a proposed program, potential defenses available to the agency, and the likely outcome” are protected work product.

Delaney, Migdail & Young, Chartered v. IRS, 826 F.2d 124, 126-27 (D.C. Cir. 1987); *accord Adlman*, 68 F.3d at 1501-02; *Schiller v. NLRB*, 964 F.2d 1205, 1208 (D.C. Cir. 1992) (documents that “contain[] tips for handling [a class of] cases that could affect subsequent . . . litigation” are the “sort of information—prepared in anticipation of litigation— [that] falls within the attorney work-product privilege and, therefore, within exemption 5”), *abrogated on other grounds, Milner v. Department of the Navy*, 131 S. Ct. 1259 (2011).

The DOE properly withheld sections of the May 2016 PCA Procedures Manual, namely, those that provide guidance to attorneys in advance of debt collection litigation. *See Pedersen Decl.*, ¶ 50. The legal analysis and strategies within this particular document, place this material squarely within the scope of the work product privilege under Exemption 5. The fact that the PCA Procedures Manual does not focus upon a specific claim does not take it outside of the work product scope, since the document is written for attorneys to prepare for eventual litigation involving debt collection. *See Delaney*, 826 F.2d at 126-27. Therefore, this information is exempt pursuant to the work product privilege.

c. The Requested Records Satisfy the Threshold of Exemption 7

The DOE through its collection of federal debt, enforces federal law. Exemption 7 protects “records or information compiled for law enforcement purposes” to the extent that disclosure could “reasonably be expected to” cause one of the harms enumerated under the subsection of the exemption. 5 U.S.C. § 552(b)(7). Agencies that have a law enforcement function can satisfy the threshold of Exemption 7 by establishing that the records at issue relate to the enforcement of federal laws and that the enforcement activity involves one of the law enforcement duties of that agency. *See Campbell v. DOJ*, 164 F.3d 20, 24 (D.C. Cir. 1998) (affirming that where an agency specializes in law enforcement it “must establish a rational

‘nexus between the investigation and one of the agency’s law enforcement duties,’ and a connection between an ‘individual or incident and possible security risk or violation of federal law’” in order to meet the Exemption 7 threshold). *See also Bagwell*, 183 F. Supp. 3d at 118 (finding that DOE satisfied law enforcement threshold for purposes of Exemption 7).

It is a well-settled principle that the term “law enforcement” in Exemption 7 refers to the act of enforcing the law—both civil and criminal. *Henderson v. DNI*, 151 F. Supp. 3d 170, 175-76 (D.D.C. 2016) (quotations omitted); *see also Pub. Emps. for Envtl. Responsibility v. U.S. Section, Int’l Boundary & Water Comm’n*, 740 F.3d 195, 203 (D.D.C. 2014) (citing *Tax Analysts v. IRS*, 294 F.3d 71, 77 (D.C. Cir. 2002)). Law enforcement records need not relate to any particular investigation; rather, “law enforcement manuals and other non-investigatory materials can be properly withheld under Exemption 7 if they were compiled for law enforcement purposes and their disclosure would result in one of the six recognized harms to law enforcement interests set forth in the subparagraphs of the exemption.” *Tax Analysts*, 294 F.3d at 79 (citations omitted).

Here, the Request seeks information regarding efforts undertaken by the DOE as a whole, specifically the FSA office, in the collection of defaulted student loan debt. *See id.*, ¶¶ 15-28, 34-41, 57. The collection of debt is a part of the FSA’s responsibilities in implementing and managing federal student financial assistance programs authorized under the HEA and its jurisdiction over defaulted student loan debt, including its established processes and the authority to impose sanctions maintain the salient characteristics of “law enforcement” as contemplated by Exemption 7. *Id.*, ¶ 15. *See also* 20 U.S.C. § 1070; *Center for Nat. Policy Review on Race and Urban Issues v. Weinberger*, 502 F.2d 370, 373 (D.C. Cir. 1974). Given the FSA’s authority over these programs, and the nature of the ACLU’s request, *see Pedersen Decl.*, ¶ 4, it is

abundantly clear that the records at issue relate to the enforcement of federal laws. *See Campbell*, 164 F.3d at 24. Moreover, the enforcement activity involved, *ie.*, the collecting of debt, is a primary law enforcement function of the DOE and, therefore, the FSA office. *See* 31 U.S.C. § 3711(g)(9) (providing for the steps available to the DOE to collect debt

Additionally, the non-investigatory nature of the materials currently being withheld is inconsequential to establishing a law enforcement purpose. *See Tax Analysts*, 294 F.3d at 79 (“an agency may seek to block the disclosure of internal agency materials relating to guidelines, techniques, sources, and procedures for law enforcement investigations and procedures, even when the materials have not been compiled in the course of a specific investigation.”).. In this case, the DOE properly withheld documents compiled for law enforcement purposes, (*ie.*, federal debt collection and managing federal student financial assistance) under Exemption 7 and its subsections. 5 U.S.C. § 552(b)(7); Pedersen Decl., ¶¶ 51-52, 56.

i. FOIA Exemption (7)(E) Allows the DOE to Withhold Documents that Details Techniques and Materials of Debt Collection

Exemption 7(E) protects records or information compiled for law enforcement purposes when release “would disclose techniques and procedures for law enforcement investigations or prosecutions, or would disclose guidelines for law enforcement investigations or prosecutions if such disclosure could reasonably be expected to risk circumvention of the law.” 5 U.S.C. § 552(b)(7)(E). *See Durrani v. DOJ*, 607 F. Supp. 2d 77, 91 (D.D.C. 2009) (“Exemption 7(E) afford categorical protection for techniques and procedures used in law enforcement investigations and prosecutions.”); *James v. U.S. Customs and Border Prot.*, 549 F. Supp. 2d 1, 10 (D.D.C. 2008) (stating that agency properly invoked Exemption 7(E) for investigative techniques where agency had demonstrated that release “could enable [others] to employ measures to neutralize these techniques”) (quoting agency’s declaration)).

The 7(E) standard “sets a relatively low bar for the agency to justify withholding.” *Blackwell v. FBI*, 646 F.3d 37, 42 (D.C. Cir. 2011). To show that disclosure “could reasonably be expected to risk circumvention of the law,” an agency does not have “a highly specific burden of showing how the law will be circumvented,” but only must “demonstrate logically how the release of the requested information might create a risk of circumvention of the law.” *Mayer Brown LLP v. IRS*, 562 F.3d 1190, 1194 (D.C. Cir. 2009) (quotation marks and alterations omitted).

The DOE withheld guidelines for the enforcement of defaulted debt collection from borrowers who have not timely repaid their student loans. *See* Pedersen Decl., ¶¶ 56, 58. Production of the information in the guidelines could lead to circumvention of the law by informing borrowers (and companies marketing their services to borrowers) of the techniques and processes of the government and the PCAs in debt collection, thereby providing them a roadmap to evade loan repayment. *Id.*, ¶ 58. For example, disclosure of the DOE’s guidelines for prosecuting collection claims or representing the Department in a garnishment hearing would provide borrowers with insight as to how to avoid prosecution, under what circumstances the DOE would be willing to compromise a debt, and how to successfully challenge wage garnishment such that a borrower or an unscrupulous company offering its services to a borrower⁷ could manipulate the collection process to avoid paying the full amount the borrower owes or to avoid collection all together. *Id.*, ¶ 60.

⁷ In December 2014, the Consumer Financial Protection Bureau (CFPB), filed a lawsuit against a company which allegedly charged consumers illegally for federal student loan services and falsely represented an affiliation with the Department, *See CFPB Takes Action to Shut Down Illegal Student Debt Relief Scheme*, March 15, 2016, <http://www.consumerfinance.gov/about-us/newsroom/cfpb-takes-action-to-shut-down-illegal-student-debt-relief-scheme>.

Similarly, the DOE withheld documents concerning certain details of the processes used by PCAs to collect on defaulted loans, including enforcement strategies. *Id.*, ¶ 58. Disclosure of the information redacted from the PCA Procedures Manual presents the same risk for circumvention of the law described above. For the same reasons, DOE also withheld 30 pages of an Agreement between the DOE and the Treasury regarding Treasury Offset procedures, which set forth guidelines by which the two agencies enforce student loans repayments. *Id.*

In short, the DOE narrowly tailored its redactions to the PCA collection process documents and the Treasury Agreement to withhold only the sort of information that could lead to manipulation or evasion of the collection process if disclosed—for example: (1) details concerning rehabilitation options and the factors the PCAs consider in offering rehabilitation options; (2) documentation considered in evaluating an Income-Driven Repayment Plan Request; (3) details of the Fast-Track program available for certain eligible borrowers; (4) compromise procedures and considerations; and (5) details of certain of the steps PCAs must take before recommending AWG and of the AWG process. The DOE also withheld certain Department system information, processing codes, screen shots, and non-public addresses because disclosure of such information could allow outsiders to interfere with the PCA’s debt collection activities through access to the system and the physical and/or mailing addresses to be used by the PCAs to communicate with the Department on various issues. *Id.*, ¶ 60.

Given the distinct potential harm from the disclosure of the DOE’s enforcement functions, the information withheld under Exemption 7(E) is subject to its protections. *See, e.g., Bagwell*, 183 F. Supp. 3d at 125 (DOE’s assertion that release of information could enable institutions to submit false statistics to “evade detection” was valid for Exemption 7(E) purposes).

CONCLUSION

For the foregoing reasons, the Defendant respectfully requests the Court to grant summary judgment in its favor.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that the foregoing document filed through the ECF system will be sent electronically to the registered participants as identified on the Notice of Electronic Filing.

/s/ Michael Sady
Michael Sady
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